

REMARKS

Claims 1 through 20 are pending in the application. All claims stand rejected under 35 U.S.C. § 103 as being obvious over of *Hubbell* in view of *Kubicky* and *Hansen* (2003/0072904).

Applicant hereby traverses the rejections.

As discussed in the previous response, all pending claims recite a core of recycled rubber material surrounded by a sleeve of a different material. Further, the claims require that the sleeve and the core be “continuous” or that the core and sleeve are co-extruded together to form a continuous post. None of the prior art of record, taken alone or in combination, discloses, teaches or suggests these features of the claimed invention.

Hubbell discloses a marine foundation piling structure having several concentric layers. As a foundation piling, it is specifically intended to be driven atop and joined to other, presumably similar, foundation pilings, as discussed at column 7, lines 9-11, lines 39-40; and column 10, lines 36-42. Thus, *Hubbell* clearly contemplates a *jointed structure*, as opposed to the claimed structure, which is continuous along its length (specifically without joints). Further, *Hubbell* has only the vaguest description of the composition of its “structural tubular element 4” as being “various materials” for example “concrete, plastic, rubber, structural foam, etc.” Column 6, lines 6-9. Nowhere does *Hubbell* disclose or suggest either a recycled rubber *or* a continuous structure for this component. It does not suggest either of these modifications.

Finally, as a foundation piling that is subjected to primarily axial, compressive or buckling loads, *Hubbell* is submitted to be non-analogous art. The present invention is subjected to both axial loads (likely both tensile and compressive) as well as bending loads. In the event of a vehicle striking the claimed invention, the claimed invention must exhibit certain behaviors in response to bending and transverse loading (as

evidenced by compliance with safety standards). Applicant respectfully submits that the disclosure of *Hubbell* is not an appropriate foundation for an obviousness rejection.

Kubicky, like *Hubbell*, discloses a jointed structure that also teaches away from the continuous structure of the present invention. Although *Kubicky* does disclose the use of recycled rubber in the core of the invention, it does not disclose or suggest that it is a universal substitute for rubber generally, or that it has utility in a continuous structure used for a sign post, as claimed. In short, *Kubicky* does not supply the limitations of the claimed invention missing from *Hubbell*. Indeed, like *Hubbell*, *Kubicky* discloses a jointed structure and therefore teaches away from the present invention. There simply is no motivation in either *Hubbell* or *Kubicky* to combine them to obtain Applicant's invention. Indeed, combining the two results in a jointed structure, which Applicant's invention intends to avoid.

Hansen, discussed at length in the previous response, like *Hubbell* and *Kubicky*, again teaches a discontinuous structure

Because *Hubbell*, *Kubicky*, and *Hansen* nor any other of the other prior art of record disclose or suggest the utility of a post having a continuous sleeve surrounding a continuous core of recycled rubber, or co-extrusion used as a manufacturing process to obtain that structure, the obviousness rejection cannot stand. These references cannot be combined, when taking their disclosures as a whole, to obtain Applicant's claimed structure. It is clear that the Examiner has attempted to "pick and choose" from isolated disclosures in the prior art in an attempt to render Applicant's invention obvious. Such hindsight reconstruction of the claimed invention is legally impermissible. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

Further, none of the other prior art of record disclose, teach or suggest a continuous core and continuous sleeve structure with the material composition claimed in various dependent claims.

Accordingly, in view of the foregoing, Applicant respectfully submits that all claims are in condition for allowance and respectfully solicits the same.

Applicant has now made an earnest attempt to place this application in condition for allowance, or in better condition for appeal. Therefore, Applicant respectfully requests, for the reasons set forth herein and for other reasons clearly apparent, allowance of all pending claims so that the application may be passed to issue.

If the Examiner has any questions or desires clarification of any sort, or deems that any further amendment is desirable to place this application in condition for allowance, the Examiner is invited to telephone the undersigned at the number listed below.

Applicant believes no fee is due for the filing of this amendment and response. If this is incorrect, the Commissioner is hereby authorized to charge any fee or credit any overpayment to Deposit Account No. 50-2180.

Respectfully submitted,



Mark D. Perdue
Reg. No. 36,890
Storm L.L.P.
Bank of America Plaza
901 Main Street, Suite 7100
Dallas, TX 75202
Telephone: (214) 347-4708
Fax: (214) 347-4799
ATTORNEY FOR APPLICANT